

REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on December 11, 2008. A Petition for a two month extension of time is submitted herewith this Amendment.. The Commissioner is hereby authorized to charge \$490.00 for the Petition for a two month extension of time and any additional fees that may be required or credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 0112701-00497 on the account statement.

Claims 1-16 are pending in this application. In the Office Action, Claims 1-16 are rejected under 35 U.S.C. §112, second paragraph and 35 U.S.C. §103 (a). In response, Claims 1-4, 7-9 and 13-16 have been amended. The amendments do not add new matter. In view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1-16 are rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to Claim 1, the Patent Office alleges that the preamble recites a “method of packaging a thick but malleable frozen dessert” and that the “preamble is inconsistent with the body of the claim, which also recites ‘dispensing the frozen dessert under pressure.’” The Patent Office also takes issue with the phrases “suitable dispensing” and “passing the frozen dessert.” See, Office Action, page 2, lines 13-21. In response, Applicants have amended Claim 1 to recite, in part, methods of packaging a thick but malleable frozen dessert and dispensing the frozen dessert under pressure in an expanded state, the method comprising placing the frozen dessert in a container equipped with a dispensing member, then, after having put the dispensing member in a closed position, pressurizing the container using a propellant gas to a pressure great enough to ensure dispensing, and passing the container having the frozen dessert through a freezing tunnel at a temperature that allows the frozen dessert to form a pasty state then dispensing it by opening the dispensing member. The amendment does not add new matter. The amendment is supported in the Preliminary Amendment at, for example, page 4, line 19-page 5, line 37. As amended, Claim 1 clarifies the phrases “suitable dispensing” and “passing the frozen dessert.” Applicants also note that independent Claim 16 has also been amended to clarify the “passing the frozen dessert” language.

Similarly, with respect to Claim 16, the Patent Office also takes issue with the preamble and states that it is inconsistent with the body of the claim since the claim does not positively recite a “packaging” method step. However, Applicants respectfully submit that such a step is not necessary or required anywhere by the Manual of Patent Examining Procedures (MPEP). For example, the “packaging” of the product, or frozen dessert, is accomplished, in part, by placing the product in the container, adding gases to the container and closing the container. While not necessarily recited *verbatim*, all of these steps are covered in independent Claims 1 and 16. Accordingly, the skilled artisan would understand that employing these steps necessarily “packages” the product. Therefore, Applicants respectfully submit that the skilled artisan would understand what steps are involved in order to practice the presently claimed invention.

The Patent Office also states that independent Claims 1 and 16 both recite language such as “using a propellant gas” and “using an expansion gas” and alleges that these limitations are not positive packaging steps but merely indicate what types of gases are present. See, Office Action, page 4, lines 12-15. However, Applicants respectfully submit that the skilled artisan would immediately appreciate what is meant by the phrases “using a propellant gas” and “using an expansion gas” when read in view of the specification. Initially, Applicants note that, as discussed above, the present claims need not recite a “packaging” method step since such a step is not required by the MPEP. Further, propellant and expansion gases are, in fact, used, or added to the container, as part of the method steps for packaging and dispensing a frozen dessert. For example, the specification clearly states that “[b]efore putting it in place, the product . . . is treated in a freezer . . . [and] supplied with nitrous oxide instead of the air normally used for expansion.” See, Preliminary Amendment, page 10, lines 16-19. The specification goes on to state that “[t]he propellant gas . . . is then introduced at a pressure of about 10 bar through the valve 4.” See, Preliminary Amendment, page 10, lines 20-21. Indeed, the specification is replete with phrases indicating that propellant and expansion gases are added to the container and/or product during the packaging process. As such, Applicants respectfully submit that the skilled artisan would immediately understand what is meant by the phrases “using a propellant gas” and “using an expansion gas” when read in view of the specification.

With respect to Claims 2 and 12, the Patent Office takes issue with the limitation “a freezer which is supplied with expansion gas so as to partially freeze and expand the ice cream.” The Patent Office states that it is not clear whether the expansion gas imparts any function to the

partial freezing of the ice cream mix or whether the is both partial freezing and partial expansion. The Patent Office also takes issue with the phrase “good dissolution of the expansion gas.” See, Office Action, page 2, line 22-page 3, line 5. Applicants note that Claim 12 does not include the limitation that the Patent Office alleges is included in Claim 12. However, Applicants assume that the Patent Office meant to discuss Claim 13 with respect to the above-mentioned phrase. Therefore, also with respect to Claim 13, the Patent Office takes issue with the limitation “at the output,” since there allegedly exists no antecedent basis, and because the Patent Office asserts that it is not clear whether the ice cream mix is treated at this temperature or is only exposed to this temperature at a particular output of a freezer.

In response, Applicants have amended Claim 2 to recite, in part, treating an ice-cream mix in a freezer, which is supplied with expansion gas so as to partially freeze and partially expand the ice-cream mix, under temperature and pressure conditions promoting good dissolution of the expansion gas in the ice-cream mix. Applicants have also amended Claim 13 to recite, in part, treating an ice-cream mix in a freezer, which is supplied with expansion gas so as to partially freeze and partially expand the said mix, the freezer operating at a temperature of about -8° C. to -12° C. at an output and at a constant pressure equal to atmospheric pressure up to 10 bars above atmospheric pressure. The amendments do not add new matter. The amendments are supported in the Preliminary Amendment at, for example, page 5, lines 23-27. In view of the present amendments to Claims 2 and 13, which properly utilize the modifier “which” with respect to the freezer, Applicants respectfully submit that the skilled artisan would immediately appreciate that the freezer is supplied with expansion gas, that the freezer takes part in partially freezing the mix, and that the expansion gas takes part in partially expanding the mix. Further, it is clear that the freezer operates at a certain temperature at an output and at a constant pressure.

With respect to the phrase “good dissolution of the expansion gas,” Applicants respectfully submit that the skilled artisan would immediately appreciate that a specific numerical degree of dissolution is not required by the present claims. Instead, the skilled artisan would immediately appreciate that the expansion gas must simply be sufficiently dissolved within the product so as to provide sufficient expansion of the product. In this regard, it would be appreciated that partial dissolution or unequal dissolution may not provide sufficient or good dissolution to provide a consistently expanded product.

Regarding Claim 7, the Patent Office asserts that the limitation “sufficiently quickly” is relative and a matter of degree as to what can be considered quick filling. See, Office Action, page 3, lines 6-7. In response, Applicants have amended Claim 7 to recite, in part, wherein the container is filled with the frozen dessert before expansion of the frozen dessert occurs. The amendment does not add new matter. The amendment is supported in the Preliminary Amendment at, for example, page 6, lines 3-12. As such, the amendment requires that the container be filled with the frozen dessert before expansion of the frozen dessert.

With respect to Claim 8, the Patent Office takes issue with the phrases “the piston,” “the piston then being positioned just under the dispensing member,” and “just under.” The Patent Office also asserts that the dependency of Claim 8 is not clear. See, Office Action, page 3, lines 8-16. In response, Applicants have amended Claim 8 to recite methods according to claim 1, wherein the container is filled through the dispensing member, a piston being positioned adjacent and under the dispensing member prior to the dispensing member filling the container. The amendment does not add new matter. The amendment is supported in the Preliminary Amendment at, for example, page 11, line 20-page 12, line 2; Figures 7-8. As such, Applicants respectfully submit that the phrase “the piston” now has proper antecedent basis and the location of the piston with respect to the dispensing member prior to filling of the container has now been clarified. Accordingly, it is now clear that Claim 8 addresses the configuration that is illustrated in at least Figures 7-8.

Regarding Claim 9, the Patent Office asserts that the limitation “into which the product to be packaged which contains the amount of expansion gas needed to obtain the desired expanded state of the dispensed product is introduced” is not clear as to whether the package or the product contains the expansion gas. See, Office Action, page 3, lines 17-20. In response, Applicants have amended Claim 9 to recite, in part, using a rigid receptacle as a container, into which the product to be packaged comprising the amount of expansion gas needed to obtain the desired expanded state of the dispensed product is introduced, and the propellant gas is introduced at the pressure desired for the dispensing. Applicants respectfully submit that the amendment clarifies that the product to be packaged includes the expansion gas needed to obtain the desired expanded state of the dispensed product, not the package.

With respect to Claim 15, the Patent Office alleges that the limitation “wherein the temperature of the product is lowered from -15° C. to -20° C.” is not clear with respect to

whether the product is lowered to said temperature range or if the product is at a temperature of -15° C. and is then lowered to -20° C. See, Office Action, page 4, lines 3-6. In response, Applicants have amended Claim 15 to recite, in part, wherein the temperature of the product is lowered to a temperature ranging from -15° C. to -20° C. The amendment does not add new matter. The amendment is supported in the Preliminary Amendment at, for example, page 12, lines 3-7. As such, Applicants submit that the skilled artisan would appreciate that the product is lowered to a temperature in the range from -15° C. to -20° C.

For at least the reasons set forth above, Applicants respectfully submit that Claims 1-16 fully comply with the requirements of 35 U.S.C. §112, second paragraph.

Accordingly, Applicants respectfully request that the rejection of Claims 1-16 under 35 U.S.C. §112, second paragraph, be reconsidered and withdrawn.

In the Office Action, Claims 1-4, 9, 12 and 14-16 are rejected under 35 U.S.C. §103(a) as being unpatentable over WO 9730600 to Riviere et al., wherein U.S. Patent No. 6,558,729 to Riviere et al. (“*Riviere*”) is relied on as an English translation of WO 9730600; U.S. Patent no. 3,677,443 to Smadar et al. (“*Smader*”); U.S. Patent No. 2,294,172 to Getz (“*Getz*”) and U.S. Patent No. 4,346,120 to Morley et al. (“*Morley*”). Applicants respectfully disagree with and traverse this rejections for at least the reasons set forth below.

Independent Claims 1 and 16 have been amended to recite, in part, methods of packaging a thick but malleable frozen dessert and dispensing the frozen dessert under pressure in an expanded state, the method comprising passing a container having the frozen dessert through a freezing tunnel at a temperature that allows the frozen dessert to form a pasty state. The amendments as discussed above are fully supported in the Preliminary Amendment at, for example, page 11, lines 15-19. Applicants have found that it is possible to package a thick but malleable frozen dessert in a pressurized receptacle with a high enough pressure given the viscosity of the product. Applicants have also found that it is also possible to choose the degree to which the product is expanded at the output of the pressurized receptacle independently of the pressure required for propulsion of the product from the receptacle and of the speed at which the product comes out of the receptacle. See, Preliminary Amendment, page 4, lines 13-19. These advantages are achieved, in part, by providing two different gases for dispensing, the product, one of which has the propulsion function and the other the expansion function. The propellant gas is virtually insoluble in the product to be dispensed when in the liquid state while the

expansion gas is highly soluble in the said liquid product. The expansion of the dispensed product will then be dependent on the amount and on the solubility of the expansion gas introduced into the receptacle, while the ejection of the product will depend on the pressure of the propellant gas introduced into the receptacle. In contrast, Applicants respectfully submit that the cited references fails to disclose each and every element of the present claims.

Riviere, Smadar, Getz and Morely all fail to disclose or suggest methods of packaging a thick but malleable frozen dessert and dispensing the frozen dessert under pressure in an expanded state, the method comprising passing a container having the frozen dessert through a freezing tunnel at a temperature that allows the frozen dessert to form a pasty state as required, in part, by independent Claims 1 and 16. Instead, *Riviere* is entirely direct toward a frozen dessert that is spoonable at freezing temperatures without the necessity of the product being expanded by the incorporation of gas or passing through a nozzle under pressure into a container in which the product is packaged under pressure. See, *Riviere*, Abstract; column 3, lines 32-38. At no place in the disclosure does *Riviere* suggest that a container having a frozen dessert be passed through a freezing tunnel, let alone a freezing tunnel at a temperature that allows the frozen dessert to form a pasty state prior to dispensing.

Smadar is entirely directed toward a non-dairy food product having a texture and eating characteristics of soft-serve ice cream that can be dispensed from a self-refrigerating dispenser containing a refrigerant under pressure and in a liquid state. See, *Smadar*, Abstract; column 3, lines 61-69. At no place in the disclosure does *Smadar* suggest that a container having a frozen dessert be passed through a freezing tunnel, let alone a freezing tunnel at a temperature that allows the frozen dessert to form a pasty state prior to dispensing.

Getz is entirely directed toward an aerated food product containing cream and having more than twice the volume of the material before aeration. See, *Getz*, column 1, lines 1-24. *Morely* is entirely directed toward frozen food products that emulate the features of soft serve ice cream but at such lower temperatures as to be suitable for prolonged storage in store and home freezers. See, *Morely*, column 1, lines 5-11. At no place in the disclosures do either *Getz* or *Morely* suggest that a container having a frozen dessert be passed through a freezing tunnel, let alone a freezing tunnel at a temperature that allows the frozen dessert to form a pasty state prior to dispensing. For at least the reasons discussed above, Applicants respectfully submit that the cited references fail to disclose each and every element of the present claims.

Accordingly, Applicants respectfully request that the rejection of Claims 1-4, 9, 12 and 14-16 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

In the Office Action, Claims 5 and 7 are rejected under 35 U.S.C. §103(a) as being unpatentable over the *Riviere*, *Smadar*, *Getz*, and *Morley* and further in view of EP 0136104 to *Scheindel* (“*Scheindel*”) and U.S. Patent No. 3,710,538 to *Lowy* et al. (“*Lowy*”); Claim 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over the *Riviere*, *Smadar*, *Getz*, and *Morley* and further in view of U.S. Patent No. 4,967,931 to *DeVries* (“*DeVries*”) as further evidenced by “Ice Cream and Frozen Desserts” to *Stogo* (“*Stogo*”); Claim 8 is rejected under 35 U.S.C. §103(a) as being unpatentable over the *Riviere*, *Smadar*, *Getz*, and *Morley* and further in view of U.S. Patent No. 5,277,336 to *Youel* (“*Youel*”) and *Scheindel*; Claims 10 and 11 are rejected under 35 U.S.C. §103(a) as being unpatentable over the *Riviere*, *Smadar*, *Getz*, and *Morley* and further in view of FR 2233843 to *Rio* (“*Rio*”) EP 0509967 to *Ciabatti* (“*Ciabatti*”), *Scheindel* and EP 1061006 to *Clauwert* (“*Clauwert*”); Claim 13 is rejected under 35 U.S.C. §103(a) as being unpatentable over the *Riviere*, *Smadar*, *Getz*, and *Morley* and further in view of GB 1232929 to E.I. Du Pont de Nemours and Co. (“*Du Pont*”) and U.S. Patent No. 4,659575 to *Fiedler* (“*Fiedler*”). Applicants respectfully submit that the patentability of independent Claim 1 as previously discussed renders moot the obviousness rejection of Claims 5-8, 10-11, and 13 that depend from Claim 1. In this regard, the cited art fails to teach or suggest the elements of Claims 5-8, 10-11, and 13 in combination with the novel elements of Claim 1.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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